

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**MAUREEN DEAKIN, RACHEL  
CLERGE, LESLEY MITCHELL, MAY  
WOJCIK, DALE KESSLER, AND ALL  
OTHERS SIMILARLY SITUATED,**

*Plaintiffs,*

**v.**

**MAGELLAN HEALTH, INC., et al.**

*Defendants.*

**Civil Action No. 1:17-cv-00773-KWR-KK**

**DEFENDANTS' MOTION TO COMPEL RESPONSES  
TO DEFENDANTS' DISCOVERY REQUESTS**

**I. INTRODUCTION**

Defendants bring this motion to compel pursuant to Rules 37(a)(3)(B)(iii) and (iv) of the FRCP and D.N.M.LR-Civ.26.6 and 37.1. The issue is straightforward. Discovery plaintiffs Carolina Gutierrez, David Watts, Diana Meier, Katherine Potts, Lisa Messinger, Patrick Shanahan, Phyllis Padilla, Randall Bemer, and Susan Luscomb have entirely refused to provide substantive responses to Defendants' First Set of Interrogatories and First Request for Production of Documents (collectively, the "Discovery Requests"). Instead, on October 7, 2021, they objected to every single document request and interrogatory. They have not subsequently attempted to defend their objections, and any attempt to do so would be undercut by the fact that other discovery plaintiffs have provided substantive responses to the exact same set of Discovery Requests. Defendants sent a letter to Plaintiffs' counsel on this issue on October 25, 2021 and asked that by October 27, 2021 at 5:00, they confirm whether they will be providing substantive responses, as October 28, 2021 was the deadline for Defendants to file a motion to compel under the Local

Rules. Plaintiffs' failure to provide responses for these nine discovery plaintiffs is particularly disconcerting, as they are currently and improperly seeking to compel Defendants to provide detailed discovery for over 900+ individuals.

As of time of this filing, Plaintiffs have not responded to Defendants' letter, which necessitated the instant motion. Therefore, Defendants are forced to bring this matter to the Court and respectfully request that these nine discovery plaintiffs be compelled to provide substantive responses to the Discovery Responses within a time deemed proper by the Court.

## **II. RELEVANT FACTUAL BACKGROUND**

Since numerous discovery plaintiffs failed to participate in the discovery process, the parties selected substitute discovery plaintiffs, and Defendants served these substitute discovery plaintiffs with the Discovery Requests on October 1, 2021. (Ex. 1, Declaration of Mark D. Temple, dated October 28, 2021 ("Temple Decl.") ¶ 5; Ex. "A" to Temple Decl., sample set of Defendants' October 1, 2021 Discovery Requests). On October 7, 2021, a number of these discovery plaintiffs provided responses. (Temple Decl. ¶ 6). Although they asserted various objections, 13 discovery plaintiffs largely provided substantive responses on October 7, 2021 and another 4 provided responses on October 14, 2021. (*Id.* at ¶ 7). However, discovery plaintiffs Carolina Gutierrez, David Watts, Diana Meier, Katherine Potts, Lisa Messinger, Patrick Shanahan, Phyllis Padilla, Randall Bemmer, and Susan Luscomb provided only objections and did not provide a single substantive response. (Temple Decl. ¶ 8; Ex. "B" to Temple Decl., sample of at-issue discovery responses).<sup>1</sup>

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<sup>1</sup> Defendants are aware of D.N.M.LR-Civ. 37.1 and D.N.M.LR-Civ. 10.5 and therefore have annexed a sample set of Defendants' Discovery Requests (Ex. "A" to Temple Decl.), as well as a discovery plaintiff's responses to same (Ex. "B" to Temple Decl.). The Discovery Requests served on the discovery plaintiffs at-issue are identical, and the discovery plaintiffs' responses thereto are largely identical. (Temple Decl. ¶ 9). Should the Court prefer that

On October 25, 2021, Defendants sent Plaintiffs' counsel a deficiency letter addressing the non-responsiveness of the discovery plaintiffs along with several other discovery issues. (Temple Decl. ¶ 10; Ex. "C" to Temple Decl., Defendants' October 25, 2021 deficiency letter to Plaintiffs' counsel). Due to the deadline to file the instant motion, Defendants requested that Plaintiffs' counsel simply confirm whether or not they will be providing complete responses and curing the deficiencies set forth in Defendants' letter by no later than 5:00pm on October 27, 2021. (Temple Decl. ¶ 11) (emphasis added). Plaintiffs' counsel ignored Defendants' good faith attempt to avoid judicial intervention and have not contacted Defendants as of this motion's filing. (*Id.* at ¶ 12).

### III. LEGAL ARGUMENT

No legal analysis is necessary. Discovery plaintiffs Carolina Gutierrez, David Watts, Diana Meier, Katherine Potts, Lisa Messinger, Patrick Shanahan, Phyllis Padilla, Randall Bemer, and Susan Luscomb have simply refused to respond to Defendants' Discovery Requests. Other discovery plaintiffs have provided substantive responses to these same requests, and the requests are narrowly tailored and go to the core of Plaintiffs' claims and Defendants' defenses, including:

- Plaintiff's resume;
- Documents concerning plaintiff's complaints relating to the claims in this action;
- Copy of plaintiff's LinkedIn or other professional networking account;
- Academic degrees and certifications held by plaintiff;
- The average number of hours worked in a workweek; and
- The amount of damages plaintiff contends to have suffered.

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Defendants submit complete copies of the Discovery Requests and responses from the other 8 discovery plaintiffs at-issue, Defendants will provide the documents in short order.

(Ex. “A” to Temple Decl.). These are indisputably proper requests, and discovery plaintiffs Carolina Gutierrez, David Watts, Diana Meier, Katherine Potts, Lisa Messinger, Patrick Shanahan, Phyllis Padilla, Randall Bemer, and Susan Luscomb should be compelled to respond pursuant to Rules 37(a)(3)(B)(iii) and (iv) of the FRCP and D.N.M.LR-Civ. 26.6 and 37.1.

#### IV. **CONCLUSION**

For the foregoing reasons, Defendants respectfully request that the Court issue an Order compelling Plaintiffs to fully respond to the Discovery Requests and an award of Defendants’ attorneys’ fees incurred as a result of Plaintiffs’ refusal to engage in good faith efforts to resolve the instant discovery dispute thereby necessitating the filing of the instant motion.

Dated: October 28, 2021

By /s/ Mark D. Temple

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**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be served a true and correct copy of Defendants' Motion to Compel Responses to Defendants' Discovery Requests and all accompanying papers this 28<sup>th</sup> day of October 2021 via the Court's electronic filing system to:

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